

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

-

W.A.No. 1547 of 2005

Date: 21.03.2006

Between:

J. Bhaskar Rao

.... Appellant

and

APSRTC rep. By its Depot Manager, Ravulapalem Depot & another.

.... Respondents

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

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-

W.A.No. 1547 of 2005

JUDGMENT: *(per the Hon'ble Sri Justice B. Prakash Rao)*

Heard Smt. R.Dushyantala, learned counsel for the appellant, and Smt. P.G.

Uma Devi, learned counsel appearing for the first respondent-Corporation.

The appellant is unsuccessful writ petitioner, who filed W.P.No.25254 of 2003, *inter alia*, assailing the award passed by the second respondent herein on a reference made as against the orders of removal from the service by the first respondent-Corporation.

The facts, which are necessary for disposal of this writ appeal, are that, initially, the appellant was appointed as a cleaner on 06.11.1975 in the first respondent-corporation and subsequently he was promoted to the post of Electrician with effect from 08.12.1980. While so, the appellant was charged with a charge sheet on the allegation that he un-authorizedly absented himself from duties for the period from 19.12.1998 to 28.12.1998. After holding a departmental enquiry, ultimately, he was removed from the service. The appeal as well as the revision preferred by the appellant was of no avail. Hence, he approached the second respondent by way of filing I.D.No.159 of 2001. Before the second respondent, the explanation offered by the appellant regarding his illness and other reasons were not found favour and therefore a nil award dated 24.04.2003 was passed, without granting any relief. Hence, the writ petition.

The learned Single Judge, through the order under appeal, concurred with the findings as arrived at by the second respondent and refused to interfere with the same. Hence the appeal.

The learned counsel for the appellant contends that the allegation made against the appellant is neither serious nor it would reflect the conduct to warrant such a serious punishment of removal of service. These submissions were sought to be repelled on behalf of the respondent-Corporation.

On considering the submissions made by both the learned counsel and on perusal of the entire material available on record, it is seen that there is no dispute with regard to the fact that the appellant absented himself from duty for about ten days, consequently he was removed from service after conducting the departmental enquiry. No other irregularity has been pointed out on behalf of the appellant in regard to the procedure followed during the course of domestic enquiry.

As per the principles laid down under Section 11(a) of the Industrial

Disputes Act, the only question that is to be considered is as to the quantum of punishment imposed against the appellant. As already stated, except the charge of unauthorized absence, there is no other serious allegations against the appellant either in the present enquiry or at any time earlier thereto. In view of the same, the ultimate and harsh penalty imposed against the appellant cannot be justified. This, absolutely, has no nexus to the gravity of the charge. These aspects have not been considered either by the second respondent or by the learned Single Judge. Even if the factum of unauthorized absence of the appellant is taken into account, that itself would not warrant such a gravest punishment of removal from service.

In view of the above circumstances, we hold that the punishment of removal is not valid. Accordingly, the order of removal, dated 09.06.2000, is set aside. Further, the appellant is directed to be re-instated into service without any back wages and attendant benefits.

With the above said observations, the writ appeal is allowed in part. There shall be no order as to costs.

(B.PRAKASH RAO.J)

(D. APPA RAO.J)

ksld

Dt.21.03.2006